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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,463	09/17/2003	Vidyanhar Babu Hegde	61,101B	4354
25212 7590 05/09/2005				
DOW AGROSCIENCES LLC 9330 ZIONSVILLE RD INDIANAPOLIS, IN 46268				
EXAMINER SHIAO, REI TSANG				
ART UNIT PAPER NUMBER				
1626				

DATE MAILED: 05/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/664,463

Applicant(s)

HEGD E ET AL

Examiner

Robert Shiao

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on responses filed on 02/22, 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)

**DETAILED ACTION**

1. This application claims benefit of the application: 10/244,124 with a filing date September 13, 2002.
2. Amendment of claims 1, 8, and 15, a filed terminal disclaimer, and an affidavit under 37 CFR 1.132 in the amendment filed on February 22, 2005, is acknowledged. Claims 1-21 are pending in the application.

***Responses to Amendment***

3. Since limitation of "and other sucking pests" has been incorporated into claim 15, therefore, rejection of claim 15 under 35 U.S.C. 112, first paragraph, has been overcome in the amendment filed on February 22, 2005.
4. Since the terminal disclaimer against Hegde et al. US 6,770,665 has been filed and approved, therefore, rejection of claims 1-21 under the obviousness-type double patenting has been overcome in the amendment filed on February 22, 2005.

***Responses to Arguments/Affidavit***

5. Since the variables  $R^1$  and  $R^2$  of the formula of claim 1 are not both hydrogen, therefore, rejection of claims 1-21 over Pechacek et al. 6,015,826 under 35 U.S.C. 102(b), is withdrawn herein.
6. Applicant's arguments/affidavit regarding rejection of claims 1-21 under 35 U.S.C. 103(a) over Pechacek et al. 6,015,826, filed on February 22, 2005, have been fully considered but they are not persuasive. Pechacek et al. disclose a number of 1, 2,

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4 - triazole compounds as agents of controlling insects and mites, see columns 1, and 47-49, compounds No. 120, 121, 125, 126, and 131. The difference between the instant claims and Pechacek et al. is that the instant compounds are isomers of Pechacek et al. It is noted that the instant phenyl moiety is linked to the second position of the thiophene ring, while Pechacek et al. is linked to the third position of the same thiophene ring. The side-by-side comparisons treating insects or mites between Pechacek et al. compound No. 29 and instant compounds No. A, B, C, or D in the affidavit is not directed to a comparison between instant compounds and Pechacek et al. isomers. Therefore, the side-by-side comparisons treating insects or mites of the instant affidavit is not persuasive, rejection of claims 1-21 under 35 U.S.C. 103(a) is maintained.

Nothing unobvious is seen in substituting the known claimed isomer of Pechacek et al. for the structurally similar isomer, since such structurally related compounds suggest one another and would be expected to share common properties (i.e., controlling mites or insects lepidoptera activity) absent a showing of unexpected results, see In re Norris, 84 USPQ 458 (1950).

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

#### ***Telephone Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Shiao whose telephone number is (571) 272-0707. The examiner can normally be reached on 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane can be reached on (571) 272-0699. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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**TAOFIQ SOLOLA**  
**PRIMARY EXAMINER**



Joseph K. McKane  
Supervisory Patent Examiner  
Art Unit 1626



Robert Shiao, Ph.D.  
Patent Examiner  
Art Unit 1626

May 3, 2005

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